IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA.

REPLY BRIEF ON BEHALF OF RAILROAD APPELLANT.

J. E. GOGGIN,
WILLIAM L. HUNTER,
CARSON L. TAYLOR,
Attorneys for Railroad Appellant.

A. N. WHITLOCK,
M. L. BEUHM,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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1. That two judges of a three-judge statutory court may determine the issues in the absence or inability of the third judge to act.

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1. That two judges of a three-judge statutory court may determine the issues in the absence or inability of the third judge to act.

2. That the determination by the Commission in the report and order here under review is not in conflict with the rules of law announced by this Court in *United States v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, 294 U. S. 499.

3. That the Commission had before it under its order of investigation the rates of the Milwaukee from mines on that railroad in Indiana to Beloit and could require changes in them, although the Milwaukee proposed no changes in those rates.

4. That the Commission is empowered to require specific changes in *reasonable* rates in order to remove discrimination, provided it exercises power granted under Section 15 of the Act.

We have set forth in the Appendix pertinent parts of the Interstate Commerce Act.

1. The Contention That Two Judges of a Three-Judge Statutory Court May Determine the Issues in the Absence or Inability of the Third Judge to Act.

The Appellees, Alton Railroad Company, *et al.*, and the Illinois and Central Coal Traffic Bureaus suggest that appellants waived the question of the jurisdiction of two judges to act for a three-judge court. If the two judges did not constitute a court, the parties could not confer jurisdiction. The United States and the Interstate Commerce Commission apparently argue that the requirement that the three judges hear and determine the case applies only to preliminary injunctions and that as a practical matter no one is harmed and the public interest is advanced by interpreting the statute as permitting two of the three-judge court to hear and determine and to issue a final injunction or to refuse a final injunction. We have urged as error the action of the two judges in finally determining

the suit in the lower court for the reason that we believe under the statute the parties are entitled to the considered judgment of a three-judge court. We believe that any other interpretation of the statute is strained and unreasonable and contrary to the accepted interpretation of the bench and bar.

2. The Contention of Appellees That the Determination by the Commission in the Report and Order Here Under Review Is Not in Conflict With the Rules of Law Announced by This Court in United States v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 294 U. S. 499.

Appellees misinterpret the opinion of this Court in *United States* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, 294 U. S. 499.

When the lawfulness of the Milwaukee's effort to maintain competitive rates on coal from mines on its railroad in Indiana was before this Court in *U. S.* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company, supra*, the Court reaffirmed certain principles by which the validity of a Commission order, prescribing rates, may be tested. In that proceeding, as here, the Milwaukee was asserting its right to maintain rates on coal which would continue a long-standing relationship between its rates and the rates from competing mines on other railroads in Illinois. This Court there held:

(a) A carrier has the right to initiate rates (506).

(b) The Commission can require cancellation of such rates only if they are found and determined to be unlawful (510).

(c) The Commission's order, requiring cancellation of rates, must be supported by adequate and precise findings making the Commission's reasons understandable to the Court (506, 511).

(d) Mere recitals in the words of the statute that the condemned rates were unlawful are inadequate and the recital must be read in the light of the report as a whole (506).

(e) The Commission cannot require the cancellation of proposed rates for the asserted reason that they will disrupt a relationship unless the lawfulness of the relationship, said to be disrupted, is first determined (507).

We say the Commission ignored these principles in the report and order here under review. Appellees say that the principles announced by the Court in the prior decision have no application here and that the Commission properly ignored the right of the Milwaukee to maintain competitive rates, because, they point out, the Court said in the prior case that the Commission "may conduct a comprehensive inquiry into the rates of all the lines within the area of controversy, may fix the fair relation between one line and another and may build the structure of the rates accordingly" (509, 510).

Appellees urge in effect that the quoted language announces a rule that the recognized limitation of the Commission's jurisdiction over rates does not apply when a comprehensive inquiry into rates in an area is being conducted. We assert that what the Court said and intended to say in the quoted language from the prior case was that the Commission was empowered in a proper case to fix rates and rate relationships *provided* there was evidence and essential findings to support the conclusion.

Having in mind the law, as announced by this Court in the prior case, we examine the Commission's report and order here. Having found that the transportation conditions, under which coal moves from Indiana and Illinois groups to the involved destinations, are sufficiently similar to require the use of the same rate basis from all such groups (R. 207) and that a difference of only a few cents a

ton in the rate might divert the tonnage from one mine to another, (R. 206), the Commission required the following result (taken from the report R. 216).

To	Rockford, Illinois			Beloit, Wisconsin		
From groups	Group distance	Present rate	Rate approved in this proceeding	Group distance	Present rate	Rate approved in this proceeding
	Miles	Cents	Cents	Miles	Cents	Cents
Brazil	251	180*	207	269	210	222
Springfield	257	180	195	276	210	210

* From origins on the Milwaukee.

The Milwaukee serves mines in the Brazil group. It reaches no mines in the Springfield group. Unless the contention, urged by appellees that the Commission in a general investigation into rates is empowered to arbitrarily fix rates, is sound, there can be no justification for this result. Here the Commission, notwithstanding the decision of the Court in the prior case, requires the disruption of the long-standing relationship between the rates from mines on the Milwaukee and the rates from mines in Illinois without a finding that the relationship was unlawful. Here the Commission requires the Milwaukee to establish rates which are 12¢ per ton higher than those applying from mines in the Springfield group although the hauls from the Brazil group to these important destinations are shorter and the transportation conditions are such as to require the same rate basis.

The relation between the rates from mines in Indiana and those from mines in Illinois is of first importance and the Commission's own report shows that when the rates from Indiana mines on other railroads in the Brazil and Linton groups were relatively higher than the rates from Illinois mines those Indiana mines shipped little or no coal to Rockford (R. 206).

The reasons which induced the Commission to reach the conclusion, resulting in the rates above delineated, are not in doubt. They are clearly expressed in the report. The Commission simply misconceived its power and here did just what the Court in *United States* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company, supra,* said it could not do. The Commission said rates other than those prescribed for the Milwaukee would change relationships in rates between Indiana group origins and *yet it did not pass upon the lawfulness of those relationships.* The Commission clearly had doubt that the relationship was in fact lawful. Here is what the Commission said (R. 190).:

> "In considering the level of the rates from the respective Indiana and Illinois groups to these destinations, as well as to Beloit, it must be borne in mind that the differential between Linton and Princeton, the two most important Indiana groups, is only 7 cents for an average difference in distance to these 12 destinations of 65 miles (73 miles from the combined Princeton and Boonville groups). *That differential is on a lower level than any other between important groups in this midwestern adjustment.* Since it is of long standing, is in effect generally throughout the Northwest, and is not here sought to be changed, we do not feel warranted in approving its disturbance. *That low differential necessarily reflects itself in relatively higher rates from the nearer Indiana groups, as well as relatively lower rates from the more distant Indiana group or groups, than might otherwise be warranted.*" (Emphasis supplied.)

This statement explains the Commission's reasoning. The Commission ignored the long standing relationship in rates between those applicable from Brazil with those from Illinois mining origins which to Rockford had existed since 1910. The Commission ignored the necessity of relating the rates from Brazil and Linton to the rates from Illinois if railroads serving the Indiana mines in

those groups are to transport coal to the destinations in competition with railroads serving Illinois mines.

The Commission to avoid examination into the lawfulness of the relationship in the rates from the Indiana mining groups simply required inflation in the rates from the mines nearest the destination and served by the Milwaukee in order to justify lower rates from the more distant groups in Indiana than would otherwise be warranted. This treatment by the Commission was characterized by Mr. Justice Cardozo as "inaction and postponement. Responsibility was shifted from the shoulders of the present to the shoulders of the days to come" (510).

Much is said in the briefs of Appellees about the dual basis of rates from the Brazil and Linton groups in Indiana. While there would appear to be nothing intrinsically unlawful about the failure of the railroads serving different mines in a mining group to establish the identical rate to a named destination, the Milwaukee has no objection to the elimination of the dual basis of rates. It simply objects to the arbitrary method adopted by the Commission to bring about a single basis of rates from each of the groups.

The Milwaukee can see no justification or warrant in law for requiring the Milwaukee to wholly ignore competitive influences and to establish rates on a level which have prevented the mines on other railroads in the Brazil and Linton groups from competing in the destination territory (R. 206.)

The Milwaukee's only wrong is that it has at all times asserted its right to establish and maintain rates from the mines which it serves which are relatively no higher than the rates from competing mines on other railroads in the Illinois groups. It has asserted that the mines which it serves should not be penalized by the requirement that coal shipped from them pay relatively higher charges

than apply from competitive mines resulting in the denial of the right of Milwaukee mines to compete in the sale of coal in these important industrial destination cities.

3. The Contention of Appellees That the Commission Had Jurisdiction Not Only to Condemn the Proposed New Rates But Also the Then Applicable Rates in Which No Change Was Proposed.

Appellees devote several pages of their briefs to the support of the Commission's action in requiring the Milwaukee Road to increase its rates applicable to the transportation of coal from mines on its railroad in Indiana to Beloit, Wisconsin, and other changes required by the Commission in rates and relationship where the railroads proposed no changes.

At the outset attention should be called to the fact that, while the appellant railroad concurs in the views urged by the coal operators (brief p. 62 *et seq.*), that the Commission is without jurisdiction to require changes in rates not included within its order of investigation, we made no particular point of this error except to demonstrate inconsistencies in the Commission's report (our brief p. 33).

The Commission, under powers granted in Section 15 of the Act, has the undoubted right to investigate the lawfulness, not only of proposed new rates but of any rates. The question here is whether or not rates other than the new proposed rates were within the Commission's order of investigation. We believe a fair reading of the Commission's order of July 30, 1942, instituting the investigation, (R. 141) clearly indicates that the Commission intended only to investigate schedules stating new rates, which were to become effective on August 2, 1942. The

appellees argue that the investigation was into the lawfulness "of all rates contained in the tariffs named in the order". The Commission's order nowhere recites that "all rates" contained in the named tariffs are the subject of the investigation and we believe the clear intent was that tariff schedules containing new rates which were suspended by the order were the only ones under investigation. The Commission's order of investigation of July 30, 1942 recites in part as follows (R. 141):

> "*It appearing,* That there have been filed with the Interstate Commerce Commission tariffs *containing schedules* stating *new* individual and joint rates and charges, and *new* individual and joint regulations and practices affecting such rates and charges *to become effective on the 2d day of August, 1942,* and later, designated as follows: (Here follows list of tariffs containing the new rates and others).
>
> "*It is Ordered,* That the Commission, upon complaint without formal pleading, enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in *said schedules* contained in said tariffs, *viz:* (Here follows designation of other tariffs). And the rates, charges, regulations and practices stated in all schedules contained in each of the other said tariffs and supplements named in this order;
>
> "*It further appearing,* That *said schedules make certain increases and reductions* in rates for the interstate transportation of bituminous coal, in carload, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of *said* schedules contained in said tariffs should be postponed pending said hearing and decision thereon;
>
> "*It is further ordered,* That the operation of the *said schedules contained in said tariffs be suspended,* and that the use of the rates, charges, regulations and practices therein stated be deferred upon interstate

traffic until 2nd day of March, 1943, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations, and practices during the said period of suspension unless authorized by the Commission.

"*It is further ordered*, That the rates and charges and the regulations and practices *thereby sought to be altered* shall not be changed by any subsequent tariff or schedule until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by the Commission. (Emphasis supplied.)

Certainly the appellees are attempting to read something into this order, as it seems clear the Commission intended its investigation to cover only schedules naming new rates, which would result in change, either in increases or reductions and not the schedules which contained the then presently applicable rates and which were not suspended. Surely this was the opinion of the Commission, for we find in the report (R. 192) "To Beloit * * * rates * * * from Brazil and Linton mines on the Milwaukee * * * are not here proposed to be changed, and, therefore, are not specifically in issue in this proceeding".

The Commission believed that the rates via the single line of the Milwaukee from mines on its railroad in Indiana to Beloit were not in issue, yet the level of these rates was required to be changed.

4. The Contention by the Appellees That the Commission Is Empowered to Require Specific Changes in Reasonable Rates in Order to Remove Discrimination.

In our brief, we urged that the Commission's recitals that the condemned rates violated Sections 2 and 3 of the Act were not supported by essential findings, that the report itself showed that the real reason for the condemnation of the rates was arbitrary and beyond the Commission's power and, if the charge that the rates violated Section 2 and 3 had any validity, the offending carrier must be afforded some alternative in removing the discrimination.

The appellees' answer to these contentions is that there were basic findings to support the Commission's conclusions, that the order was entered under Section 15 of the Act and, since the order was entered under Section 15, there is no requirement in the law that the offending carrier be given an alternative to effectuate the removal of the discrimination.

We do not intend to elaborate on the argument in our brief. We do, however, respectfully urge examination of appellees' contention. With respect to the assertion by appellees that the conclusions of the Commission are supported by adequate findings, they rely on *U. S.* v. *Chicago Heights Trucking Company*, 310 U. S. 344, where this Court upheld an order of the Interstate Commerce Commission which had condemned the publication by truckers of lower rates for the transportation of freight forwarder traffic than those rates which applied for the transportation of the traffic of other shippers. The Court there simply, and rightly, held that a carrier discriminated if it published different rates between two points, the application of which depended upon who was the shipper. In that case, quite obviously, no elaborate findings would be

necessary to support the order or for a clear understanding of what reasons and facts controlled the Commission's judgment. The Commission did not there say that the carrier could not publish lower rates, it simply held that the carrier could not have two sets of rates between the same points.

It is confusing to follow the arguments urged by the appellees, concerning the power of the Commission on the finding that certain rates are discriminatory. They apparently agree that if a Commission's order is based on a violation of Section 3 of the Act, some alternative must be afforded the offender, but here they say the order was entered under Section 15, and Section 15, they believe, empowers the Commission to prescribe specific rates without regard to the rights of the shipper or of the carrier. We agree that this order was entered under Section 15, as are all orders of the Commission which require the removal of violations of Sections 1, 2, 3 and 4 of the Act, the sections which prescribe the standards which the carrier must observe in the publication of its rates. Section 15 is a procedural statute, which authorizes the Commission to hear and determine and order the removal of any violations of Sections 1, 2, 3 or 4 found to exist in the publication of rates. The Commission does not enter any order under Section 3. It enters an order under Section 15, if there is found to be a violation of Section 3.

The appellees apparently are confused by dicta found in the note in *Texas and Pacific Railway Co.* v. *U. S.*, 289 U. S. 627. There the Court, after reciting on page 650 that "Where an order is made under Section 3, an alternative must be afforded", said in a footnote "This is not true of an order pursuant to Section 15 (1), prescribing maximum or minimum or maximum and minimum rates; but the present orders were not issued under that section". It is clear that the appellees have wholly misunderstood the meaning

of the footnote. *The Court certainly did not intend to contradict in a footnote a rule of law announced in the opinion.*

What the Court intended to have understood by the footnote was that the Commission could under Section 15 (1) prescribe maximum rates or minimum rates or maximum and minimum rates where the record would support such orders without granting to any carrier an alternative. This is made clear by the decision of the Court in *Youngstown Sheet and Tube Company* v. *U. S.*, 295 U. S. 476, where this Court upheld an order of the Interstate Commerce Commission requiring the establishment of minimum rates. In that case, involving the rates applicable to the transportation of coal from various origins to destinations in Ohio, the Commission found that rates below those specifically required to be established were unreasonably low and a minimum rate order was entered. This clearly explains what the Court said on page 480:

> "The order of the Commission was based primarily upon the reasonableness of the minimum prescribed. The existing rate structure furnished support for the finding of reasonableness.
>
> "There is no merit in the contention that the order was a Section 3 order and invalid for failure to afford the carriers an alternative of raising the contested rate or lowering others to remove discrimination. It is true the Commission found prejudice to shippers all rail, but in essence the order entered was a Section 15 order and not one made under Section 3."

Confusion results from the expression found in cases that a particular order is entered by the Commission under Sections 1, 2, 3 or 15, while as a matter of fact all Commission orders respecting rates, excepting those regarding state rates (13th Section) are made by virtue of power delegated and expressed in Section 15. In the *Texas and Pacific Case, supra,* the Court reviewed an order of the Interstate Commerce Commission, by which the Commis-

sion in exercising its authority under Section 15 required the elimination of what was found by the Commission to be a violation of Section 3. In the *Youngstown Sheet and Tube Company case, Supra,* the Court reviewed an order of the Commission entered under the authority of Section 15, and designed to require the removal of the violation of Section 1, which prohibits the maintenance of unreasonable rates.

The power delegated to the Commission by the terms of the Act, as interpreted by this Court, is clear. All that is necessary to reconcile the cases is to have an understanding of the issues before the Commission and which were reviewed by the Court.

If the assailed rate is found to be unreasonable, in violation of Section 1, the Commission, acting under Section 15, may prescribe a reasonable rate for the unreasonable rate and may, if the record warrants, prescribe a maximum or a minimum, or a maximum and minimum reasonable rate. If the assailed rate is found to be unreasonable, in violation of Section 1, and unduly prejudicial, in violation of Section 3, the Commission by an order under Section 15, may prescribe a reasonable and non-prejudicial or non-discriminatory maximum or minimum rate, depending upon the evidence of record. If the assailed rate is found to be not unreasonable but unduly prejudicial or discriminatory then the Commission, by its order requiring the elimination of the violation, must afford the carrier an alternative so that the wrong can be corrected by the raising of one rate or the lowering of another, or the altering of both. The Act, Section 3 (1) recites in part: "It shall be unlawful for any common carrier * * * to make, give or cause any undue preference or advantage to any particular person, * * *." This Section is directed to the unlawful conduct of a carrier, and the legality or the illegality of a carrier's practice depends on its own act, and not upon the act of another.

Pertinent is the statement by Mr. Justice Brandeis in *Central Railroad Co.* v. *United States*, 257 U. S. 247, 259:

> "What Congress sought to prevent by that section (Section 3), as originally enacted, was not differences between localities in transportation rates, facilities and privileges, but unjust discrimination between them by the same carrier or carriers. Neither the Transportation Act 1920, February 28, 1920 c. 91, 41 Stat. 456, nor any earlier amendatory legislation has changed, in this respect, the purpose or scope of Section 3".

This would seem to be a complete answer to the assertion of appellees that the Commission, when dealing with several railroads and many rates, can, by a broadside finding, charge a violation of Section 3 when responsibility for the discrimination cannot be charged to the conduct of one carrier or a group of carriers acting in concert.

Here there were no findings to support the recital that Sections 2 and 3 were violated. There were no findings that the Milwaukee controlled the rates from the mines said to be discriminated against or that the Milwaukee acting in conjunction with other railroads controlled the rates from mines said to be discriminated against. There was, therefore, lacking the essential element for the finding that Sections 2 and 3 were violated. The Commission has no roving power to fix rates. It has no more or different jurisdiction over rates which may form a complicated rate adjustment than it does over the single rate of one carrier. Its power is definitely circumscribed by the Act. It may only require the carrier to cancel unlawful rates and to establish rates which conform to the standards fixed by the Act. It cannot under any circumstances arbitrarily fix rates as appellees contend, but in prescribing rates it must act on evidence. "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it." *Chicago Junction Case*, 264 U. S. 258, 265.

And in *Interstate Commerce Commission* v. *L. & N. Ry. Co.*, 227 U. S. 88, 92:

> "Under the statute the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable, there was no jurisdiction to make the order".

There is no contention by any of the parties or finding by the Commission that the rates of the Milwaukee, condemned by the Commission, are unreasonable. There were lacking essential elements from which the Commission could properly find that the Milwaukee rates were discriminatory or prejudicial and the Commission made no adequate findings that the rates were unlawful in this respect. "All that the Milwaukee has done is to initiate a schedule which must be upheld as lawful unless adequate reasons are presented for setting it aside". *United States* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, 294 U. S. 499, 510.

There should be a reversal and the Commission's order should be perpetually enjoined.

J. E. Goggin,
William L. Hunter,
Carson L. Taylor,
Attorneys for Railroad Appellant.

A. N. Whitlock,
M. L. Bluhm,
Of Counsel.

April 7, 1947.

APPENDIX.

The Interstate Commerce Act, U. S. C. Title 49, provides:

Section 1(5) (a):

"Sec. 1. (5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

Section 2:

"Sec. 2. That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

Section 3(1):

"Sec. 3. (1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect

whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

Section 15 (1):

"(1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or col-

lect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

Section 15 (7):

"(7) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of prop-

erty, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after the date this amendatory provision takes effect, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."